

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5409 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SARDARBA WD/O CHAUHAN FULSINH MANSINH

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR NK MAJMUDAR for MR PB MAJMUDAR for Petitioner
None present for Respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/01/97

ORAL JUDGEMENT

1. Heard learned counsel for the petitioner and perused the Special Civil Application. Challenge is made by the petitioner in this Special Civil Application to the order of the Gujarat Revenue Tribunal dated 17-12-1983, made in Revision Application No.TEN.B.A. 965/82 declining to extend the benefit of sec.8 of the Gujarat Agricultural Land Ceiling Act in the case to the petitioner.

2. The land of survey no.486 admeasuring 5 acres and 35 gunthas has been sold by the petitioner to one Lakhabhai Rabari for Rs.1900/- in the year 1966 though the sale deed has been executed on 29th June, 1971. In similar way, the petitioner sold the land of survey nos. 22 and 23 to one AjitKumar Rao and Harshadbhai Rao for Rs.3000/- in the year 1966 though the sale deed has been executed on 29th June, 1971. The amount of consideration was admittedly received by the petitioner in the year 1966 and the possession of the land in dispute has also been given to the purchasers. The petitioner made an application under sec.8(2) of the Gujarat Agricultural Land Ceiling Act to the Collector, Vadodara on 28th June, 1976 for declaration that the said transfer was not made in anticipation and in order to defeat the object of the amending Act of 1972. The Deputy Collector under its order dated 22-6-1978 came to the conclusion that the petitioner has failed to prove that the transfer was not made in order to defeat the object of the Act. Against the said order, the petitioner preferred a revision application before the Tribunal being TEN.B.A.899/78 and the case was remanded back to the Deputy Collector for fresh decision as the Tribunal was of the opinion that the Deputy Collector had not applied his mind on all issues and has not passed a speaking order. It has also been observed by the Tribunal that the Deputy Collector was not under any obligation much less a legal obligation to seek any opinion of the Collector while deciding the matter when the matter was to be judicially decided by him. On remand, the Deputy Collector held fresh inquiry and under its order dated 29th February, 1980 declined to give declaration as prayed for by the applicant. The petitioner again approached to the Tribunal. The Tribunal under its order dated 21st August, 1980 allowed the said revision application and matter was again remanded back to the Deputy Collector for hearing it afresh and after giving opportunity to the transferor and transferee and also to the authorised Officer of the State Government and after considering the evidence which may be produced on their behalf to the effect whether the transfers were or were not made in anticipation to defeat the object of the Act. The Deputy Collector held further inquiry and under its order dated 31st March, 1982 granted declaration as prayed for. Against this order of the Deputy Collector, the State Government filed revision application before the Tribunal being TEN.B.A.965/82. The Tribunal under its order dated 17-12-1983 set aside the order of the Deputy Collector and allowed the revision application of the State Government. The petitioner had preferred a review application which came to be dismissed by the Tribunal under its order dated

22-3-1984. Hence this Special Civil Application.

3. The Tribunal in this case prima-facie found that the petitioner was holder of surplus land. The power of attorney holder of the transferees have deposed before the Deputy Collector on oath that the sale was effected orally in the year 1966 and the possession was handed over to the transferees in the year 1966. The sale deeds were executed on 29th June, 1971. The Deputy Collector has accepted the case of the petitioner that the sale of land were effected in the year 1966 possession thereof has been given to the transferee in the same year, which finding was not interfered with by the Tribunal. In the presence of the admitted case of the parties, the transferor and the transferee and which has been accepted by the Deputy Collector, the Tribunal has rightly held that the Deputy Collector has no jurisdiction to grant declaration under sec.8 of the aforesaid Act. The Tribunal in the judgment has not reproduced the amended sec.8 of the aforesaid Act. Sec.8 as amended by the Act of 1972 reads as under:

8. Transfers or partitions made after 15th January, 1959 but before commencement of this Act-

(1) Where after 15th day of January, 1959

but before the commencement of this Act, [or after 24th day of January, 1971, but before the specified date], any person has transferred whether by sale, gift, mortgage, with possession, exchange lease, surrender or otherwise or partitioned any land held by him, then notwithstanding anything contained in any law for the time being in force such transfer or partition shall, unless it is proved to the contrary, be deemed to have been made in anticipation in order to defeat the object of this Act. [Where such transfer or partition was made after 15th day of January, 1959 but before the commencement of this Act or in order to defeat the object of the Amending Act of 1972 where such transfer was made after 24th day of January, 1971 but before the specified date]:

[Provided that where any transfer or partition of land is effected by a document required by law to be registered which is however not registered and such document, purports to have been executed before 24th day of January, 1971 no court shall pass a decree in any suit filed for the grant of specific relief on the

basis of any such document unless the court is satisfied on merits of the case that the document is a bona fide document executed in fact before 24th January, 1971, and that is not ante-dated as a result of collusion between parties or otherwise in order to defeat the object of the Amending Act of 1972:

Provided further that nothing in this sub-section shall apply to any transfer of land by way of gift or partition made on or after the 24th January, 1971 to a son who was major on the said date.]

(2) Any person affected by the provisions of sub-section (1) may, within the prescribed period and in the prescribed form, make an application to the Collector for a declaration that the transfer or partition was not made in anticipation in order to defeat the object of [this Act, or as the case may be, of the Amending Act of 1972]

(3) On receipt of such application, the Collector shall hold an inquiry and after giving an opportunity to the transferor and the transferee or as the case may be, to the parties to the partition, to be heard and after considering the evidence which may be produced decide whether the transfer or, as the case may be the partition was or was not made in anticipation in order to defeat the object of [this Act, or as the case may be, of the Amending Act of 1972] and accordingly may---

(i) reject the application, or

(ii) by order in writing make a declaration that the transfer or, as the case may be, the partition was not made in anticipation in order to defeat the object of [this Act, or as the case may be, of the Amending Act of 1972]

(4) Where the application is rejected, the transfer or, as the case may be, the partition shall be ignored in computing under this Act the area of surplus land, if any, held by such person.

4. From the reading of the provisions as contained in sec.8 as amended by the Act, 1972, it is clear that

the Deputy Collector has jurisdiction to grant the declaration under sec.8 of the Act, if the transfer is made within the period from 24th January, 1971 to 1st April, 1976, but in the present case, it is an admitted case of the transferor and transferee that the transaction of the sale has been made in the year 1966 and the possession of the land has also been delivered. This case has also been accepted by the Deputy Collector. The Deputy Collector has committed a serious error in going by the date of the sale deeds which apparently has been executed deliberately with an object to frustrate the provisions of the Ceiling Act, a beneficial piece of legislation. Moment the Deputy Collector has accepted that the sale has taken place in the year 1966 may be orally, it has no jurisdiction whatsoever to grant any declaration in favour of the petitioner under sec.8 of the aforesaid Act. The Tribunal has not committed any error much less any jurisdictional error in interfering with the order of the Deputy Collector and setting aside the same. The petitioner has not made out any declaration under sec.8 of the aforesaid Act. From the admission of the transferor and transferee coupled with the date of the sale deed, it is apparent that the sale deed has been executed in 29th June, 1971 in anticipation in order to defeat the object of the Ceiling Act. The review application filed by the petitioner has rightly been rejected by the Tribunal. The order made by the Tribunal does not call for interference of this court.

5. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged.

zgs/-